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PATENT

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Date

5/13/92  
*[Signature]*  
Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

See 1. below

Serial No.:

Group Art Unit:

Filing Date:

Examiner:

Title:

DECLARATION OF DARYL MUENCHAU  
UNDER 37 CFR 1.28(c)(2)

The Honorable Commissioner of  
Patents and Trademarks  
Washington, D.C. 20231

Dear Sir:

I, Daryl Muenchau, declare as follows.

1. I am Manager of Technology Development, Gilead Sciences, Foster City, California 94404, the assignee of the below-identified applications:

Serial No.

Filing Date

07/559,958

July 30, 1990

07/559,957

July 30, 1990

07/585,780

September 20, 1990

07/594,147	October 10, 1990
07/595,870	October 11, 1990
07/617,907	November 23, 1990
07/625,680	December 10, 1990
07/640,654	January 14, 1991
07/643,382	January 18, 1991
07/652,978	February 2, 1991
07/683,420	April 8, 1991
07/690,786	April 24, 1991

2. I am not an attorney and am not registered to practice patent law. Gilead has never had in-house registered patent counsel.

3. I am responsible for the coordination of Gilead's patent matters and the primary liaison with outside law firms handling patent prosecution and patent filings for Gilead Sciences.

4. I was aware that the patent rules permit certain entities to establish status as small entities for the purposes of paying fees in patent applications at a reduced scale. Gilead Sciences had in the past determined that it qualified for small-entity status. The basis for this representation was that Gilead as a small business under 37 CFR 1.9. As such, Gilead Sciences clearly met the definitions to qualify.

5. To the best of my recollection, I did not review Gilead Sciences entitlement to small-entity status prior to filing of the small-entity statement in the above-identified applications. The reason I did not is that Ms. Murashige was engaged to file the above-identified applications and other Gilead Sciences applications related to some of the above-identified applications, including the parent

applications thereof. Ms. Murashige is an experienced patent attorney familiar with Gilead Sciences.

6. As the only person in Gilead handling patent-related matters and liaison with outside patent counsel, it was impossible to do more than a very cursory check of the work of outside counsel, and in the case of Ms. Murashige and her firm, we had the utmost confidence.

7. We now have instituted the practice of checking of each newly filed or allowed U.S. patent application for any relationships with third parties which might affect small-entity status before signing any small-entity declarations or paying issue fees.

8. I was aware of the existence of a July, 1990 agreement with a large third party company prior to the filing of the small-entity statement in each of the above-identified patent applications, but did not realize that it might affect Gilead Sciences' status and so did not inform either Dr. Riordan or Ms. Murashige. I also did not realize this when I routinely received a letter from Ms. Murashige in these applications, such as attached as Exhibit A.

9. There was a lack of understanding on my part and others in Gilead as to the precise legal meaning and intent of the provisions for small-entity statements as they might relate, if at all, to third party license agreements. Accordingly, I did not advise Ms. Murashige of the exact nature of third party agreement or its relationship to Gilead U.S. patent applications at either (1) the time I became aware of the executed agreement and the provisions thereof relating to Gilead U.S. patent applications, or (2) the time of filing the above listed applications.

10. The possible importance of this agreement first came to my attention when I was studying 37 CFR provisions prior to my taking the morning session of the Patent Agents examination to become registered to practice before the USPTO. I thereafter reviewed the relationship of the provisions of the third party agreement with the large company and the above-identified patent applications and concluded that small entity status was not appropriate for these applications. I then discussed the matter with Ms. Murashige and instructed Ms. Murashige to take all necessary steps to correct the entity status from small entity, including payment of deficiencies in fees in all the affected above-identified U.S. applications.

11. No attempt was made improperly or through gross negligence to (i) establish status as a small entity, or (ii) pay fees as a small entity. The error occurred in good faith but through inadvertence and without deceptive intent as described herein.

12. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the applications or any patent issuing thereon.

Date April 21, 1992

Daryl Muenchau  
Daryl Muenchau